



Appendix VII

**DOHP 220-3-00**  
**Methods of Administration**  
**Equal Opportunity in Service Delivery**  
  
**and**  
  
**The Americans with Disabilities Act**  
**of 1990, As Amended**

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**I. Policy.** This procedure establishes the department's Methods of Administration to ensure nondiscrimination and equal opportunity in service delivery in accordance with state and federal laws.

A. The policies prescribed in this procedure apply to all department sponsored programs and activities involved in providing equally effective and equally accessible quality services to Department of Health clients and potential clients.

1. No person shall on the basis of age, color, disability, national origin, race, religion or sex be excluded from participation in, be denied benefits of, or be subjected to unlawful discrimination under any program or activity receiving or benefiting from federal financial assistance and administered by the department.

2. No person shall be retaliated against, harassed, intimidated, threatened, coerced or discriminated against for making a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing, or for opposing alleged unlawful discriminatory practices prohibited by this policy or related to state and federal laws, rules and regulations.

B. Department of Health programs and contracted service providers providing aids, benefits or services to Department of Health clients or potential clients may not on the basis of age, color, disability, national origin, race, religion or sex (except as provided by federal law):

1. Deny any individual the opportunity to participate in or receive the aid, benefit or service provided.

2. Provide any individual any service, financial aid or other benefit that is different or is provided in a different manner from that provided to others.

3. Afford or provide an individual an opportunity to participate in or receive aid, benefit or service that is not equal to that afforded or provided to others.

4. Subject an individual to segregated, different or separate treatment in any manner related to receipt of aid, benefit or service unless such action is necessary to provide qualified persons with disabilities with aid, benefits or services that are as effective as those provided to others.

5. Treat an individual differently from others in determining admission, enrollment, quota, eligibility, membership or other requirement or condition which must be met in order to receive any aid, benefit or service provided. (The exclusion of persons from the benefits of a program limited by federal statute or executive order to a specific class of persons is not prohibited.)

6. Deny any individual the opportunity to participate as a member of a planning or advisory board.

## **II. Authority.**

### **A. Code of Federal Regulations, in order by chapter.**

1. 7 CFR, Part 15, requires nondiscrimination on the basis of age, color, disability, national origin, race, religion or sex in programs and activities funded by the United States Department of Agriculture.
2. 28 CFR, Part 35, provides for nondiscrimination on the basis of disability in state and local government services and implements Title II of the Americans with Disabilities Act of 1990.
3. 29 CFR, Part 1630, equal employment opportunity for individuals with disabilities, prohibits discrimination against qualified individuals with disabilities in all aspects of employment and implements Title I of the Americans with Disabilities Act of 1990.
4. 41 CFR, Chapter 60, Office of Federal Contract Compliance Program, Equal Employment Opportunity, prohibits employment discrimination on the basis of race, color, religion, sex, national origin, disability and Vietnam era veterans status; and requires the development of an affirmative action plan to promote affirmative action in the employment and advancement of qualified women, Vietnam era veterans, minorities and individuals with disabilities in covered government contracts and subcontracts. (Executive Orders 11246, 11375, 11701 and 11758)
5. 45 CFR, Part 80, requires nondiscrimination on the basis of race, color or national origin in federally assisted programs and activities. (Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d et sec.)
6. 45 CFR, Part 84, requires nondiscrimination on the basis of disability in federally assisted programs and activities. (Section 504, Title V of the Rehabilitation Act of 1973, as amended, 29 USC 794)
7. 45 CFR, Part 86, requires nondiscrimination on the basis of sex under federally assisted education programs and activities. (Title IX of the Education Amendments of 1972, as amended, 230 USC 1681 et seq.)
8. 45 CFR, Part 91, requires nondiscrimination on the basis of age in federally assisted activities. (Age Discrimination Act of 1975, 42 USC 6101 et seq.)

### **B. Florida Statutes, in order by statute number.**

1. Section 110.105, Florida Statutes, establishes the nondiscriminatory employment policy of the state of Florida.
2. Section 110.201(3), Florida Statutes, requires each state agency to comply with all federal regulations necessary to receive federal funds.

### **C. Florida Administrative Code.**

1. Chapter 60L-21, Florida Administrative Code, provides for equal employment opportunity and affirmative action, requiring each state agency to develop and implement its affirmative action program, assuring equal employment opportunity.

**III. Supportive Data.** Not Applicable.

**IV. Signature Line with Effective Date.**

Signature on File at the Office of Equal Opportunity and Minority Health

Robert G. Brooks, M.D.  
Secretary

Date  
May 16, 2001

**V. Definitions.**

**A. Accessibility.**

1. Architectural. A barrier-free environment in which the mobility of persons with disabilities is not inhibited by external forces such as architectural design.
2. Program. The operations of each program or activity (delivery of client services) so that the program or activity, when viewed in its entirety, is readily accessible to persons with disabilities. This does not require that each facility or every part of a facility be made accessible to and usable by persons with disabilities. Providers with fewer than 15 employees may, as an alternative, refer the clients with disabilities to other providers of those services that are accessible.

**B. Accommodation to Persons with Disabilities.** The obligation of an organization doing business with the government to make reasonable accommodations to an applicant's or employee's physical and mental limitations. It may mean changing a job slightly, doing it in a different order, modifying equipment, moving supplies nearer a work site, etc. Exception: If the accommodation clearly affects the safety and efficiency of the organization or substantially affects costs, the accommodation is not required.

**C. Adverse Impact.** Applying uniformly to all applicants or employees certain human resource or admission policies (e.g., word-of-mouth recruiting, diploma requirements, intelligence tests, minimum height requirements) that have the effect of denying benefits, services, employment or advancement to members of affected classes. Business necessity is the only justifiable reason for adverse impact.

**D. Affected Class (Protected).** Any group or member of that group protected by the nondiscrimination laws or the affirmative action obligations of federal contractors. The federal nondiscrimination laws protect individuals from discrimination because of age, color, disability, national origin, race, religion and sex.

**E. Artificial (Arbitrary or Unnecessary) Barriers to Employment.** These are non-job-related requirements for employment that prevent minorities, women and individuals with disabilities from being hired or promoted. Such barriers may be found in recruitment, selection, placement, testing, transfers, promotion, seniority, lines of progression or other terms and conditions of employment. Typical artificial barriers to employment that have been found illegal are height requirements, requirements for high school diplomas which have no real relation to the skills required by any job, language requirements for jobs which require limited verbal communication.

**F. Civil Rights Act of 1964.** A comprehensive law establishing federal guarantees of civil rights in the fields of voting, public accommodations, use of public facilities, public education, benefits under federally assisted programs, employment and other fields generally categorized as equal

protection of the laws within the meaning of the Fourteenth Amendment to the United States Constitution. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, prohibits discrimination in public employment on the basis of race, color, religion, sex or national origin. Title VI prohibits discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin.

G. Complainant or Charging Party. A person who files a complaint of discrimination as provided in section VII of this procedure.

H. Department Program and Activities. The operating units of the department include, but are not limited to, the program office, children's medical services (CMS) units, labs, county health department units, as well as other service and treatment facilities.

I. Discrimination (Unlawful). The failure to treat persons equally because of their race, sex, age, religion, national origin or disability.

J. Disparate Treatment. Enforcing rules, regulations or other policies or practices differently for different groups. This kind of uneven treatment is a violation of Titles VI and VII. Example: A supervisor who ignores applicant requirements for white males, allowing many to qualify, then applies the same requirements rigidly for blacks or women so that few blacks or women qualify. Uneven enforcement of work, attendance, punctuality, safety or other rules are also examples of disparate treatment, all of which violate Titles VI and VII.

K. Equal Employment Opportunity (EEO) Contact. Appointed by a county health department (CHD) or children's medical services (CMS) unit and responsible for assisting the EEO coordinators or the Office of Equal Opportunity and Minority Health in the overall coordination of EEO activities.

L. EEO Coordinators. Appointed by a county health department or consortium and responsible for the overall coordination of EEO activities.

M. EEO Liaisons. Appointed by division directors and responsible within their division for overall coordination of EEO activities.

N. Federal Financial Assistance includes;

1. grants and loans of federal funds,
2. the grant or donation of federal property and interests in property,
3. the detail of federal personnel,
4. the sale and lease of, and the permission to use federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
5. any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

O. Federal Government Contract. Any agreement or modification thereof between any contracting agency (federal) and any person (contractor or subcontractor) for use of real or

personal property including lease arrangements. The term "service" as used in this paragraph includes, but is not limited to, the following services: utility construction, research, transportation, insurance and fund depository, irrespective of whether the government is the purchaser or seller. The term "federal government contract" does not include agreements in which the parties stand in relationship of employer and employee, and federally assisted contracts. (Unless specified, Department of Health contracts and grants are considered federal financial assistance and not government contracts.)

P. Hearing Impaired Person. A deaf or hard of hearing person defined as follows:

1. Deaf Person. An individual who has suffered a permanent hearing impairment and is not able to discriminate speech sounds in verbal communication, with or without amplification devices.
2. Hard of Hearing Person. An individual who has suffered a permanent hearing impairment which is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

Q. HHS Office of Civil Rights. The Office of Civil Rights of the Department of Health and Human Services, responsible for Department of Health compliance with Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Omnibus Budget Reconciliation Action of 1981.

R. Individual with a Disability. Any person who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such an impairment, or is regarded by a recipient of federal financial assistance as having such an impairment.

1. Physical or Mental Impairment. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems, i.e., neurological, musculoskeletal, special sense organs, respiratory (including speech) organs, cardiovascular, reproductive or digestive, genitourinary, hemic and lymphatic, skin and endocrine. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.
2. Major Life Activities. Those functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
3. Record of Impairment. A history of or being classified as having a mental or physical impairment that substantially limits one or more major life activities.
4. Regarded as Having an Impairment. Having a physical or mental impairment that does not substantially limit major life activities, but such impairment is treated by a recipient as constituting such a limitation; having a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or having none of these impairments, but being treated as having such an impairment.

S. Program. Includes any program, project or activity for the provision of services, financial aid, or other benefits to, or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals.

T. Provider/Contractor. Any individual, organization, institution, or agency from which the

department purchases or arranges for the provision of client services or benefits under departmental programs and activities.

U. Public Entity. Any public entity covered by Title II of the Americans with Disabilities is defined as;

1. any state or local government;
2. any department, agency, special purpose district, or other instrumentality of a state or local government; or
3. certain commuter authorities as well as AMTRAK.

V. Race/Ethnic Categories. For record keeping purposes of this plan, each applicant and employee is classified in only one of the following race/ethnic categories:

1. Black, not of Hispanic origin.
2. White, not of Hispanic origin.
3. Hispanic.
4. American Indian or Alaskan Native.
5. Asian or Pacific Islanders.

W. Section 504. Title V, Section 504 of the Rehabilitation Act of 1973, which establishes federal law requiring nondiscrimination on the basis of disability in federally assisted programs and activities.

X. Title VI. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

## **VI. Protocol.**

### **A. Responsibilities**

1. Responsibilities Under Title VI.
  - a. Title VI of the Civil Rights Act of 1964 as implemented by 45 CFR Part 80 prohibits discrimination on the basis of race, color or national origin in any program or activity receiving or benefiting from federal financial assistance. Specifically, Title VI states, "no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health and Human Services."
  - b. Within the Department of Health, the Secretary or his designee is responsible for coordinating the department's efforts to comply with Title VI. Such responsibility includes coordination of the development and uniform implementation of the federally required "Methods of Administration" to ensure the delivery of equally effective and equally



accessible services in a nondiscriminatory manner. County health department administrators and other departmental entities have designated persons as Title VI coordinators to coordinate the agency's efforts to comply with Title VI.

c. Contracted service providers with 15 or more employees are required to designate Title VI coordinators to coordinate their efforts to comply with Title VI to provide reasonable assurances that all services are equally effective, equally accessible and provided in a nondiscriminatory manner.

d. The Department of Health has submitted written assurance to the United States Department of Health and Human Services that the Department of Health will comply with the federal regulation implementing Title VI. The Department of Health must secure written assurance from each of its providers, providing services to clients, that the provider will also comply with this federal regulation which specifies that the Department of Health and its providers may not directly or through contractual or other arrangements:

- (1) Deny an individual any service, financial aid, or other benefit provided based on race, color or national origin.
- (2) Provide any service, financial aid, or other benefit to an individual that is different, or is provided in a different manner, from that provided to others.
- (3) Subject an individual to segregation or separate treatment based on race, color or national origin.
- (4) Restrict an individual, because of race, color or national origin, in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.
- (5) Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition because of race, color or national origin.
- (6) Deny on the basis of race, color or national origin, an opportunity for an individual to participate in any program.
- (7) Deny an individual the opportunity to participate as a member of a planning or advisory board because of the individual's race, color or national origin.
- (8) Utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program.
- (9) Select a site or location of a facility with the effect of

excluding individuals from, denying them benefits of, or subjecting them to discrimination under any program or activity on the basis of race, color or national origin.

Note: An individual shall not be deemed to be subject to discrimination by reason of his exclusion from the benefits of a program limited by federal law to individuals of a particular race, color, or national origin.

e. Departmental entities or contracted service providers, providing services to clients, will submit compliance reports annually and as otherwise requested, to the designated Department of Health official to enable the department to carry out its obligations under compliance reporting requirements. Even in the absence of prior discrimination, departmental entities or contracted service providers may take affirmative action to overcome the effects of conditions limiting participation by individuals of a particular race, color or national origin.

## 2. Responsibilities Under Section 504.

a. Section 504 of the Rehabilitation Act of 1973 is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. 45CFR§84.4 (a) states in part: "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance."

b. Within the Department of Health, the Secretary or his designee is responsible for coordinating the department's efforts to comply with Section 504. County health department directors and other departmental entities have designated persons as Section 504 coordinators to coordinate agency efforts to comply with Section 504, including development and implementation of county specific auxiliary aids plans. This plan should be submitted to the Office of Equal Opportunity and Minority Health by March 31 of each year.

c. Contracted service providers with 15 or more employees are required to designate Section 504 coordinators to coordinate their efforts to comply with Section 504, including the development and implementation of an auxiliary aids plan.

d. As defined by the federal regulation implementing Section 504, "Individual with a disability" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. A "qualified individual with a disability" includes a person who meets the essential eligibility requirements for receipt of activities or services. The Department of Health and its providers may not, directly or through contractual or other arrangements:

- (1) Deny a qualified individual with a disability any service, or

the opportunity to participate in or benefit from any service, because of that person's disability.

(2) Afford a qualified individual with a disability an opportunity not equal to that opportunity afforded others to receive or benefit from services.

(3) Provide a qualified individual with a disability with services that are not equally effective to the services provided to others. (Note: To be equally effective, the services are not required to produce identical results or levels of achievement for persons with a disability and persons without a disability, but must afford persons with a disability equal opportunity to obtain the same results, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to each individual's needs.)

(4) Provide services that are separate or different from those services provided to others unless such action is necessary to provide qualified individuals with a disability or to any class of individuals with a disability with aid, benefits or services that are as effective as those provided to others.

(5) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminated based on handicap in providing any aid, benefit or service to beneficiaries of their programs.

(6) Deny the opportunity to participate as a member of planning or advisory boards to individuals with disabilities.

(7) Limit an individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit or service.

(8) Deny an individual with the opportunity to participate in programs or activities that are not separate or different, even if a separate or different program or activity exists to accommodate individuals with disabilities.

(9) Utilize criteria or methods of administration that subjects a person to discrimination on the basis of disability, defeats or substantially impairs accomplishment of the objectives of the program with respect to individuals with a disability, perpetuates the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(10) Select sites or locations for facilities that have the effect of excluding persons with a disability from, denying them the benefits of, or subjecting them to discrimination under any

program or activity on the basis of their disability or that defeats or substantially impairs the accomplishment of the objectives of the program or activity.

e. The exclusion of a individual from a program limited by federal law to persons with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by law to a different class of individuals with a disability is not prohibited.

f. The department and its providers of client services must operate programs so that each program, when viewed in its entirety, is readily accessible to persons with disabilities. The department and its providers may comply with this requirement through such means as redesigning equipment, reassigning aides to beneficiaries, delivering services at alternate accessible sites or through home visit, altering existing facilities, constructing new facilities, making all programs and services accessible by telecommunication devices for the deaf, providing interpreters for the deaf, supplying Braille or taped materials for persons with impaired vision or other similar means.

g. The department and its providers of client services are not required to make each existing facility or every part of a facility accessible to and usable by persons with a disability; nor are they required to make structural changes in existing facilities where other methods are effective in achieving compliance. However, in choosing among available methods, the department and its providers must give priority to those methods that offer programs to persons with disabilities in the most integrated setting appropriate.

h. If a service provider with fewer than 15 employees, after consultation with a person with a disability seeking its services, determines that there is no method of complying with the program accessibility requirements other than making significant alteration in its existing facilities, the provider may refer the individual with a disability to another provider whose services are accessible.

i. The department and its client contracted service providers with 15 or more employees are required to provide appropriate auxiliary aids to qualified persons with impaired sensory, manual or speaking skills when such aids are necessary to afford those persons an equal opportunity to benefit from any service offered by the department or its providers. Auxiliary aids may include Braille or taped material, interpreters for the deaf and other aids for persons with impaired hearing, vision or mobility. Providers with fewer than 15 employees are required to provide auxiliary aids when the provision of such aids does not significantly impair the ability of the provider to provide its benefits or services.

j. The department and its providers of services to infants in programs or activities receiving federal financial assistance shall post an informational notice in locations where nurses and other medical professions providing health care and related services to infants will see it. This notice must state that nourishment and medically beneficial treatment (as determined with

respect for reasonable medical judgments) should not be withheld from disabled infants solely on the basis of their present or anticipated mental or physical impairments. (Refer to 45CFR §84.55 for the specific requirements for this notice.)

k. The department and its health care providers are required to report to the state child protective services agency, in a timely manner, circumstances which they determine to constitute known or suspected instances of unlawful medical neglect of infants with disabilities.

### 3. Responsibilities Under the Americans with Disabilities Act.

a. The Americans with Disabilities Act provides protection in several areas for individuals with disabilities and prohibits discrimination on the basis of disability.

b. The Secretary or his designee is responsible for coordinating the department's efforts to comply with and carry out its responsibilities under the Americans with Disabilities Act.

c. The Americans with Disabilities Act requires that:

(1) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department or its contracted service providers.

(2) The department or its contracted service providers in providing any aid, benefit, or service may not on the basis of disability:

(a) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(b) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(c) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(d) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids,

benefits, or services that are as effective as those provided to others;

(e) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service;

(f) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(g) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(3) The department and its providers may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(4) The department and its providers may not utilize criteria or methods of administration that:

(a) Have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(b) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the program by individuals with disabilities;

(c) Perpetuate the discrimination of another public entity if both entities are subject to common administrative control or are agencies of the same state.

(5) In the selection of a site or location of a facility, the department and its contracted service providers may not make a selection that:

(a) Has the effect of excluding individuals with disabilities from, denying them the benefit of, or otherwise subjecting them to discrimination.

(b) Has the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program or activity.

(6) In the selection of procurement contractors, the department may not subject qualified individuals with disabilities to discrimination based on disability.

(7) The department will not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by the department are not covered by this part.

(8) The department will make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the modifications would fundamentally alter the nature of the service, program, or activity.

(9) The department will not impose or apply eligibility criteria that screens out or tends to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program or activity unless such criteria is necessary for the provision of the service, program or activity offered.

(10) The department is not prohibited from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by the Americans with Disabilities Act.

(11) The department shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(12) The department shall not require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the Americans with Disabilities Act that the individual chooses not to accept.

(13) The Americans with Disabilities Act does not authorize the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(14) The department may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required.

(15) The department shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(16) The department shall not deny health services, or services provided in connection with current illegal use of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(17) The department and its contracted service providers shall not discriminate against any individual because that individual has opposed any act or practice made unlawful by the Americans with Disabilities Act (ADA), or who made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the ADA.

(18) The department and its contracted service providers shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA.

#### 4. Responsibilities Under the Age Discrimination Act.

a. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. Each program and contracted service provider has primary responsibility to ensure that its programs and activities are in compliance with this act and to take steps to eliminate violations of this act.

b. Within the Department of Health, the Secretary or his designee is responsible for coordinating the department's efforts to comply with and carry out the department's responsibilities under the Age Discrimination Act.

c. The Age Discrimination Act requires that:

(1) No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

(2) The department and its contracted service providers may not use age distinctions or take any other actions that have the effect of:

(a) Excluding individuals from, denying them the



benefits of, or subjecting them to discrimination under, a program or activity receiving federal financial assistance.

(b) Denying or limiting individuals the opportunity to participate in any program or activity receiving federal financial assistance.

(3) The department and its contracted service providers may take action based on age if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. This includes circumstances when:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

(4) The department and its contracted service providers are permitted to take action otherwise prohibited, if that action is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age if the factor bears a direct and substantial relationship to the normal operation of the program or activity or the achievement of a statutory objective.

(5) The burden of proving age distinction or other action falls within the rule exceptions is on the department and its contracted service providers receiving Federal financial assistance.

(6) If the department or its contracted service providers are operating a program that provides special benefits to the elderly or to children, the use of age distinctions shall be presumed to be necessary to the normal operation of the program.

B. Assignment of Responsibilities within the Department of Health. Compliance with these procedures will be ensured individually and collectively by assignment of responsibilities for civil rights compliance activities as specified in this section.

1. The Office of Equal Opportunity and Minority Health will be responsible for the coordination of all civil rights compliance activities and will:

- a. Provide technical assistance, guidance and necessary training to department personnel.
- b. Disseminate civil rights compliance information to the Equal Employment Opportunity (EEO) coordinators, other appropriate department personnel and interested parties.
- c. Process complaints of discrimination in accordance with procedures established by this section.
- d. Review compliance reports and investigations conducted by assigned state and county compliance representatives.
- e. Assist county and headquarters staff, as appropriate, with reviews of and correspondence to other agencies and service providers to achieve civil rights compliance.
- f. Inform department staff of pertinent civil rights issues and activities.
- g. Serve as liaison between the Department of Health and the United States Department of Health and Human Services' Office for Civil Rights, and other agencies or groups concerned with the nondiscriminatory delivery of services.
- h. Conduct periodic on-site validation reviews of program, county and provider civil rights compliance activities to ensure uniform implementation of nondiscrimination requirements.

2. Division directors will appoint employees as EEO liaisons to be responsible within their respective divisions for overall coordination of equal opportunity activities. The liaisons' duties will include:

- a. Monitoring equal opportunity program or division functions within headquarters and coordinating county program monitoring through county EEO coordinators.
- b. Providing technical assistance to headquarters program offices regarding program accessibility.
- c. Investigating complaints of alleged discrimination.
- d. Coordinating preparation of required reports, including program or division specific portions of the affirmative action plan.
- e. Participating in and assisting EEO coordinators and Office of Equal Opportunity and Minority Health staff in equal opportunity and related civil rights compliance activities.
- f. Advising the respective division director of problems and recommended remedial action.
- g. Ensuring that the department's policy statement, federal EEO posters

and other related materials are displayed in appropriate areas for employees and the public.

3. County health department directors, CMS and other unit directors, and the A. G. Holley Hospital administrator will be responsible for the implementation of Methods of Administration procedures and for ensuring compliance with all civil rights regulations and procedures effecting the departmental Methods of Administration. The Directors and the Administrator will appoint an EEO coordinator or contact person. The coordinators' duties will include:

- a. Reviewing and monitoring for compliance with the civil rights regulations and procedures.
- b. Providing technical assistance as required and for providing the coordination of the Methods of Administration at the county or hospital level.
- c. Providing civil rights training or orientation as appropriate.

## **VII. Procedures**

A. Dissemination of Information. The Department of Health will provide notification of its compliance responsibilities to participants, potential participants, applicants, employees, providers and subcontractors. Further, the Department of Health will appropriately post its equal opportunity and nondiscrimination policy.

### **1. Procedures for Notification.**

- a. The Office of Equal Opportunity and Minority Health will distribute, as appropriate, copies of the Notice of Compliance/Statement of Policy to organizations in Florida representing minorities, women, senior citizens, and persons with disabilities.
- b. The Bureau of Human Resource Management will distribute, as appropriate, copies of the Notice of Compliance/Statement of Policy to those unions or associations having collective bargaining agreements with the department.
- c. The Notice of Compliance/Statement of Policy will be permanently posted as follows:
  - (1) Offices of the deputy state health officers and deputy secretaries on official bulletin boards under their jurisdiction;
  - (2) Headquarters' division offices on official bulletin boards;
  - (3) County, A. G. Holley Hospital, CMS and other departmental entity offices on official bulletin boards;
  - (4) Servicing Human Resource Offices;
  - (5) Service centers in client waiting rooms and client interviewing rooms at facilities serving clients;

(6) Facilities of contracted service providers receiving or benefiting from Federal financial assistance administered by the Department of Health;

(7) In a conspicuous place in all other department facilities or programs.

2. Procedures for Monitoring Notification Requirements.

a. The county, headquarters and departmental entity coordinators and contacts are responsible for periodic monitoring to ensure that notices are properly posted and that the department's nondiscriminatory policy is appropriately disseminated.

b. The respective county, headquarters, hospital contract or other administrative managers or supervisors, and EEO coordinators and contacts, as directed by the county health department directors, hospital administrator, or division directors, will conduct annual on-site reviews to determine department and provider compliance with this requirement.

3. Supply of Posters.

a. Notice of Compliance/Statement of Policy posters will be distributed by the Office of Equal Opportunity and Minority Health. Additional posters may be ordered from the forms warehouse.

B. Civil Rights Compliance.

1. The Department of Health assures that all employees, officials, agents, agencies, contractors, subcontractors, sub-grantees or others with whom it arranges to provide services or benefits to participants or employees in connection with any of the department's programs and activities are not discriminating against those participants or employees in violation of applicable civil rights statutes, regulations, guidelines and standards. Each contract must include suitable language that assures compliance with civil rights laws.

2. To provide reasonable assurances of compliance with civil rights laws, each service provider, departmental program, and institution will be reviewed annually by the designated manager for compliance.

a. Each contract manager will maintain a list of current contracts and providers.

b. The Civil Rights Compliance Checklist (Exhibit A) will be completed annually by all contracted service providers.

(1) The checklist is subject to a desk review by the contract manager. The contract manager will submit the checklist to the EEO coordinator by June 15 of each year.

(2) The EEO coordinator will report compliance reviews of service providers to the Office of Equal Opportunity and Minority Health by July 20 of each year on the Civil Rights

Compliance Report (Exhibit B).

(3) Each provider with 15 or more employees will be subjected to an on-site validation review once every three years. The On-Site Validation Review Report (Exhibit C) will be submitted to the EEO coordinator for final review and submission to the Office of Equal Opportunity and Minority Health.

(4) For any provider found to be out of compliance, a corrective action plan will be developed or a compliance agreement will be negotiated to remedy any deficiencies found, or the contract will be terminated. The Office of Equal Opportunity and Minority Health must approve all corrective action plans.

c. The Civil Rights Compliance Checklist will be completed annually by each county health department, hospital, local program and program office.

(1) The checklist will be submitted to the EEO coordinator by June 15 of each year.

(2) The EEO coordinator will report compliance reviews of local programs and program offices to the Office of Equal Opportunity and Minority Health by July 20 of each year on the Civil Rights Compliance Report.

(3) The EEO coordinator and the Office of Equal Opportunity and Minority Health will complete the On-Site Validation Review Report for on-site civil rights reviews that are conducted.

(4) The Office of Equal Opportunity and Minority Health will monitor compliance reviews through desk reviews of reports, validation reviews, on-site civil rights reviews corrective action plans, and the annual county specific affirmative action plans.

d. Federal civil rights compliance reviews will be conducted as required by the federal agency involved. The Office of Equal Opportunity and Minority Health will act as the department liaison coordinating such reviews.

3. Periodic on-site civil rights compliance reviews will be conducted to provide reasonable assurance of compliance with civil rights laws.

a. Prior to conducting the on-site review, as well as, during the review:

(1) Coordinate scheduling with the appropriate staff.

(2) Obtain a brief description of the scope and nature of services provided.

(3) Obtain and review a description of the organization and

structure for the provision of these services, including size of staff, by types of positions, e.g., nurses, counselors, etc.

(4) Obtain and review statistics, giving racial and ethnic breakdown showing:

- (a) Number of applicants in the preceding year.
- (b) Number of persons currently receiving assistance or services.
- (c) Any other statistics available by race, sex, and national origin, such as average monthly WIC assistance, infant and maternal mortality rate, number of referrals to other agencies or programs and client area demographics.

(5) Review available information such as: facility brochures, pamphlets or questionnaires; completed Civil Rights Compliance Checklist; auxiliary aids and limited English proficiency plans; infectious disease control procedures; affirmative action plans; civil rights complaints and complaint procedures; special incident reports; management reviews; program monitoring reports; self-evaluations; and accessibility studies.

(6) Review other relevant information that is available regarding comparative data such as the location and racial utilization of other similar facilities.

b. During the facility on-site review:

- (1) Visit the facility or program and interview key staff, including designated Title VI and Section 504 coordinator(s) to discuss program, policies, and activities of each unit of operation.
- (2) Use the On-Site Validation Review Report and address all elements on the report.

c. County, local office, or program office review:

- (1) Describe the methods used, including time intervals, by the program office to monitor civil rights requirements and to conduct reviews.
- (2) Identify any forms or instructions developed to supplement those provided by the Office of Equal Opportunity and Minority Health (attach copies, if indicated).
- (3) Describe methods used to assure continued compliance with nondiscrimination in services on the part of staff of the county or headquarters program.

(4) Describe methods used to assure that staff make referrals to or otherwise utilize for beneficiaries only those vendors or community agencies offering services without discrimination and who provide equally effective and equally accessible quality services to those referred.

(5) Describe how clients are assigned to staff.

(6) Describe how trainees or employees are selected and assigned.

d. Handling Complaints of Discrimination.

(1) Identify methods used in disseminating information concerning the right to file a complaint to:

(a) Beneficiaries of assistance or services.

(b) Applicants or potential applicants.

(c) Other interested persons and the general public.

(2) Describe methods for receiving, handling, investigating and making final disposition of complaints.

(3) Summarize the complaints of discrimination received during the reporting period, including the nature of discrimination alleged, findings, disposition of complaints and any corrective steps taken.

e. Concluding the Review.

(1) Deficiencies and accomplishments should be discussed with the appropriate manager and EEO coordinator.

(2) Courses of corrective action and time elements involved should be discussed with the administrator and the EEO coordinator as appropriate.

(3) A letter of findings of compliance or noncompliance should be sent to the facility with the report. Deficiencies, corrective action and time elements should be included, if applicable.

(4) If the problem appears to be severe, a follow-up visit will be made to determine progress in the areas of noted deficiencies. Any recommendations for contract termination or referral for administrative or legal proceedings will be made to the county

health department, CMS unit director or division director.

C. Auxiliary Aids and Limited English Proficiency Plan. The department and its contracted providers of client services will provide appropriate auxiliary aids to individuals with impaired sensory, manual, or speaking skills where necessary to afford such persons an equal opportunity to benefit from programs and benefits of the department. Interpreters and auxiliary aids will be available for use by clients or potential clients with impaired sensory, manual or speaking skills in each phase of the service delivery process when the lack of such interpreters or aids may in effect deny service accessibility or hinder service effectiveness.

1. The director of administration, county health department, CMS unit and other major entity directors, and the hospital administrator are responsible for the development and implementation of their respective auxiliary aids plan that provides assisting devices, interpreters or readers and physical modifications to ensure the accessibility of programs and services to clients or potential clients with sensory (hearing and sight), speaking or mobility impairments. The Director of the Office of Equal Opportunity and Minority Health is the designated Title VI, Section 504 and ADA coordinator for the department and is responsible for the overall coordination and the development and implementation of the Department of Health Methods of Administration for ensuring the nondiscriminatory delivery of equally effective and equally accessible quality services. Clients and potential clients are generally provided services through the counties; therefore, each county specific auxiliary aids and limited English proficiency plan must cover persons in the respective geographic area. Such clients will be directed to the appropriate operating county for actual delivery of services.

2. A copy of each county, hospital and the headquarters plan or update to the plan is submitted to the Office of Equal Opportunity and Minority Health by March 31 of each year.

3. Minimum Requirements for the Auxiliary Aids and Limited English Proficiency Plan.

- a. A description of auxiliary aids available for use in each phase of the service delivery process (e.g., telephone inquiries, requests, intake interviews, service provision, counseling, emergency services, etc.) when the lack of such aids may in effect deny service accessibility or hinder service effectiveness.

- b. A list of the resources available (e.g., TTD, list of qualified interpreters, including Department of Health staff and qualified volunteers, deaf service centers, and other organizations serving persons with hearing, vision and mobility impairment) shall be maintained in each county, hospital and by each service provider with over 15 employees. The county health department director, hospital administrator and provider administrator shall designate a specific office of accountability to ensure proper dissemination of this information.



c. A training requirement for direct services field staff, institutional staff and other staff who deal with the public, to include an awareness of hearing impairments and deafness; vision impairments and blindness; mobility and psychological impairment; the communication options available for auxiliary aids; how to access those aids; and the responsibility to provide reasonable accommodations to ensure that programs and services are equally accessible to and effective for persons with disabilities. Training shall be made available to contract service providers as appropriate.

d. At a minimum, detailed procedures to be used by direct service staff in requesting appropriate auxiliary aids shall include:

- (1) How client needs are to be assessed.
- (2) Who is responsible for approving the request and obtaining the appropriate auxiliary aid.
- (3) A time standard for the provision of services. In some cases delaying services is not always practical or appropriate; therefore, provision should be made for communication alternatives when advance notice for an auxiliary aid is not given.
- (4) A full range of communication options with the selection of the option the person with the hearing, sight or mobility impairment believes is the most effective to ensure such persons are provided effective access to health care and other services. The range of options that must be provided at no cost to the person with the hearing impairment must include:
  - (a) Formal arrangements with interpreters who can accurately and fluently express and receive in sign language. The names, addresses, phone numbers and hours of availability of interpreters must be readily available to direct services employees.
  - (b) Supplemental hearing devices.
  - (c) Written communication.
  - (d) Flash cards.
  - (e) Staff training in basic sign language expressions relevant to emergency treatment.

(f) At least one telecommunications device, or an arrangement to share a TDD line with other facilities.

(g) Family members may be used only if they are specifically requested by the hearing impaired person.

(5) A procedure for notifying clients and applicants of the availability of auxiliary aids and procedures for requesting an auxiliary aid.

(6) A monitoring procedure for ensuring compliance with this regulation.

4. When it is necessary to obtain auxiliary aids, every effort will be made to obtain them within the department's current resources, including qualified volunteers and volunteer organizations. However, if an auxiliary aid is required and must be purchased or leased, payment will be made from the appropriate operating budget. Finance and accounting procedures govern the purchase and provision of interpreter services. A qualified interpreter will be paid fees in accordance with finance and accounting procedures.

5. The following procedures are to be followed by Department of Health employees in providing auxiliary aids to ensure the accessibility of programs and services to clients or potential clients with sensory (hearing and sight), speaking or mobility impairments.

a. Client needs are to be assessed through consulting with the client or potential client concerning his or her preferred communication mode, and if applicable with the assigned caseworker, counselor, parent, other family member, guardian or other representative and the auxiliary aids coordinator.

b. The communication options for hearing impaired persons will include but not be limited to telecommunications devices for the deaf (TDD), telephone facsimile transmittal (FAX), phone amplifiers, sign language interpreters, flash cards, lip-reading, written notes, supplementary hearing devices, charts, signs or a combination of these.

c. The Department of Health or provider administrative official with budget approval authority over the unit or facility involved, or the designated official as otherwise provided in the specific auxiliary aids plan has the responsibility for approving the request and obtaining the appropriate auxiliary aid. Financial management payment policies and procedures are to be followed.

d. Auxiliary aids will be provided within two days of request or

as otherwise required. Delaying services is not always practical or appropriate; therefore, provision will be made for communication alternatives when advance notice of a need for an auxiliary aid is not given.

e. The use of auxiliary aids will be at no cost to the client. Finance and accounting procedures along with this procedure, the Americans with Disabilities Act Accommodations Manual and the appropriate auxiliary aids plan govern the purchase and provision of interpreter services.

f. Meetings, conferences and seminars will be accessible to persons with sensory, speech or mobility impairments. Facilities used for meetings, conferences and seminars will be reviewed for accessibility by the unit sponsoring the activity in coordination with the designated Section 504 Coordinator or Auxiliary Aids and Limited English Proficiency Coordinator. When meetings, conferences or seminars are scheduled, information will be included in the advertisements, conference registration materials or meeting notices, that sensory impaired participants will be provided with necessary auxiliary aids at no cost to themselves. The information will include the name of a contact person and a date by which the person must request such assistance. The registration process should include a method for determining the number and type of disabled individuals (participants) needing assistance, as well as, the type of personal assistance requested.

g. The Department of Health Nondiscrimination Policy and the hearing impaired poster will be displayed in each building housing headquarters, hospital, CMS and county employees at main entrances in lobby areas; in each facility serving clients at admission desks, waiting rooms and bulletin boards. The name, telephone number and TDD number for the designated Auxiliary Aids and Limited English Proficiency coordinator will be listed on the hearing impaired poster to assure accessibility to clients or potential clients, or their representatives. Descriptive information on the availability of assisting devices or aids will be included in announcements related to meetings, seminars, workshops and conferences, as well as, to services offered by headquarters, hospital and county units and by contracted service providers.

h. County, hospital, CMS unit and headquarters employees and provider staff who provide direct services to clients will be trained on how to assist sensory impaired clients and potential clients in obtaining assisting devices and aids, or other reasonable accommodations. Such training will include:

- (1) Procedures for serving or accommodating hearing impaired, sight impaired and mobility impaired clients or potential clients.

(2) Awareness of hearing impairments, deafness, speech impairments, sight impairments, blindness, reading impairments, dyslexia and mobility impairments.

(3) Communication options available.

(4) How to provide reasonable accommodations for qualified clients and potential clients, i. e., how to access or purchase auxiliary aids, interpreter services or physical modifications.

(5) Requirements for making meetings, conferences and services accessible.

i. Records relating to the auxiliary aids plan implementation, specifically including the methods and sample copies of information, such as brochures, letters, memoranda, newspaper notices, staff meetings or public service announcements, used to inform employees or clients of this nondiscriminatory policy will be documented and maintained for three years by the designated 504 coordinator for the subject program or service provider.

D. Complaint Procedures. This section establishes uniform procedures for resolving complaints of discrimination filed against the Department of Health. These procedures apply to department employees, applicants for employment, clients, and potential clients who allege unlawful discrimination by reason of race, color, sex, marital status, religion, age, national origin or disabling condition.

1. Employees, applicants for employment, clients and potential clients of the Department of Health who believe that they have been discriminated against may file a written complaint of discrimination.

a. Employees and applicants for employment may file a written employment discrimination complaint within 365 days of the alleged discriminatory act with:

(1) Office of Equal Opportunity and Minority Health  
Department of Health  
4052 Bald Cypress Way, Bin A00Tallahassee, FL  
32399-1701  
(850) 245-4002  
TDD (850) 410-1451

or the local EEO coordinator

(2) Florida Commission on Human Relations  
325 John Knox Road  
Building F, Room 240  
Tallahassee, FL 32399-1570  
(850) 488-7082

b. Employees and applicants for employment may file a written complaint within 360 days of the alleged discriminatory act with the United States Equal Employment Opportunity Commission.

c. Clients and potential clients may file a written complaint within 180 days of the alleged discriminatory act with:

(1) Office of Equal Opportunity and Minority Health  
Department of Health  
4052 Bald Cypress Way, Bin A00  
Tallahassee, FL 32399-1701  
(850) 245-4002, TDD (850) 410-1451

or the local EEO coordinator

(2) United States Department of Health and  
Human Services, Office of Civil Rights  
Atlanta Federal Building  
61 Forsyth Street  
Atlanta, GA 30303  
(404) 562-7222

(3) United States Department of Agriculture  
Food and Nutrition Service  
61 Forsyth Street, SW, Suite 8T36  
Atlanta, GA 30303  
(404) 562-1801

(4) United States Department of Justice  
Civil Rights Division  
Disability Section  
Post Office Box 66738  
Washington, D. C. 20035-6738  
1-800-514-0301  
TDD 1-800-514-0383

d. The complaint must contain:

(1) Basis for the complaint, e. g., race, color, religion, sex, age, national origin, disability, or retaliation.

(2) Name, address and phone number of the person filing the charge (complainant).

(3) Name and address of the employer or provider being filed against (respondent).

(4) Description and dates of the alleged discriminatory act(s).

(5) Be affirmed or signed by the complainant.

e. Complaints filed with federal and state agencies are subject to federal and state laws governing such complaints. Final determination of the validity of the complaint will be made by that agency.

2. The Office of Equal Opportunity and Minority Health is the department's central intake point for all externally and internally filed complaints. Other Department of Health offices receiving such complaints directly are to immediately forward the complaints to the Office of Equal Opportunity and Minority Health.

3. Complaint receipt.

a. Internal complaints are complaints filed directly with the Office of Equal Opportunity and Minority Health or the local EEO coordinator. Upon receipt of a written complaint, the Office of Equal Opportunity and Minority Health will send written acknowledgement of the internal complaint to the complainant and will notify the headquarters administrator, county health department director, CMS unit or hospital administrator who has line responsibility for the alleged discriminatory official. The complaint will then be assigned and investigated.

b. External complaints are complaints filed directly with another agency. Upon receipt of an externally filed complaint, the appropriate administrative official will be notified and the complaint will be assigned and investigated.

4. Complaint Investigation.

a. Within five calendar days of receipt of a complaint, the Office of Equal Opportunity and Minority Health will forward the written complaint along with a document request to the appropriate EEO coordinator or administrator responsible for the investigation. The document request will delineate each allegation and documents to be obtained.

b. Another department representative may be designated as the investigator at the discretion of the county health department director, hospital administrator or headquarters official. If another investigator is assigned, the Office of Equal Opportunity and Minority Health will be informed in writing of the designated investigator and the reason.

c. Within 30 calendar days of receipt of the complaint assignment, an investigative report will be prepared, submitted for review and approval, through the appropriate legal counsel, to the county health department director, hospital administrator, or appropriate headquarters official and returned to the Office of Equal Opportunity and Minority Health.

d. The investigative report will include, but not be limited to, the following:

- (1) The complaint and any additional information which the complainant wishes to submit.
- (2) Affidavit(s) by any witnesses testifying on behalf of the complainant.
- (3) Affidavit(s) by the Alleged Discriminatory Official (ADO) in response to each allegation with any supporting documentation.
- (4) Affidavit(s) by any witnesses testifying on behalf of the ADO(s).
- (5) Statement of position by the respondent, together with any documents in support of that position.
- (6) Records and documents gathered in evidence from the respondent.
- (7) Investigator's summary and recommendation of a finding of reasonable cause or no reasonable cause to believe that discrimination or retaliation has occurred as alleged.

e. If the county health department director, hospital administrator, other appropriate official or the Office of Equal Opportunity and Minority Health determines the report to be insufficient, the report will be returned for further review or investigation. Any objections should be noted in writing to indicate the specific deficiencies cited or other reasons for rejection.

f. Requests for extensions of the time to complete the investigative report may be made to the Office of Equal Opportunity and Minority Health through the appropriate official, county health department director or hospital official by the EEO coordinator whenever additional time is required to submit the investigative report. Reasons for the need for additional time and the anticipated completion date will be included in the request.

g. Upon receipt of the investigative report, the Office of Equal Opportunity and Minority Health will review the report for sufficiency to determine if there is a need for additional information or immediate corrective action. The report and any addendum required to fully address the issues in the complaint and the Office of Equal Opportunity and Minority Health recommendation will be submitted along with the complaint

summary to the department's legal office for review.

5. Complaint Decision and Disposition. Based on the investigative report, finding and recommendations, the Director of the Office of Equal Opportunity and Minority Health will determine the department's position relative to each complaint.

a. Internal Complaints.

(1) If there is a finding of no reasonable cause, the complaint will be dismissed, the complaint file closed, and the complainant and ADO(s) notified of the decision. However, the complainant does have the option to file the complaint externally.

(2) If there is a finding of reasonable cause, conciliation will be initiated by the Office of Equal Opportunity and Minority Health with the EEO coordinator, the appropriate administrative officials and the complainant.

b. External Complaints.

(1) If the department finds no reasonable cause, the Office of Equal Opportunity and Minority Health will prepare a position statement supporting this finding and will submit that statement along with supporting documentation to the external agency who will make the final determination of the complaint.

(2) If the department finds reasonable cause, the Office of Equal Opportunity and Minority Health will initiate conciliation in coordination with the EEO coordinator, the appropriate department official, the Department of Insurance (Division of Risk Management) and the State Comptroller.

(3) If the external agency finds reasonable cause, they will initiate conciliation coordinated internally by the Office of Equal Opportunity and Minority Health with the EEO coordinator, appropriate departmental official, the Department of Insurance (Division of Risk Management) and the State Comptroller.

6. Retaliation Prohibited. No person shall intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 or any other state or federal civil rights laws, or because he or she participated in any manner in an investigation, proceeding or hearing under said laws.



## E. Training and Evaluation.

### 1. Training.

a. The Office of Equal Opportunity and Minority Health will ensure that appropriate civil rights compliance training and technical assistance are provided to the county, CMS unit and headquarters coordinators to include:

(1) Annual EEO coordinators' workshop.

(2) Pre-service training on civil rights compliance responsibilities, including investigative techniques, to new EEO coordinators within 30 days after appointment.

b. EEO coordinators will be responsible for provision of EEO training and orientation, as appropriate, to include:

(1) New employee orientation.

(2) In-service training for new employees who are serving on an EEO compliance committee, supervisors, and contract providers.

(3) Training for contract managers, grants managers, other staff assigned civil rights compliance responsibilities and other employees as appropriate.

(4) Training will consist of workshops, technical assistance conferences, as well as, the distribution of pamphlets, procedures, guidelines and other technical assistance materials.

### 2. Evaluation.

a. The Office of Equal Opportunity and Minority Health will assume the overall responsibility for evaluating compliance activities to determine the effectiveness of procedures used to maintain compliance.

b. Compliance review and evaluation may also be scheduled with other review activities.

c. County health department directors, CMS unit directors and the hospital administrator are responsible for the evaluation of county, CMS and hospital compliance activities to determine the effectiveness of procedures used to maintain and to assure county and institutional civil rights compliance.

d. The evaluation process will be completed by on-site reviews of all programs and providers, reviews of civil rights

compliance checklists, quality assurance reports, related data and surveys, including reviews by the Office of Equal Opportunity and Minority Health.

F. Reports and Record Keeping. The reports and reviews required to implement each county's civil rights compliance activities will be maintained and reviewed to determine the extent to which provisions of this procedure and the related civil rights compliance requirements have been followed.

1. Reports.

a. The Civil Rights Compliance Checklist will be completed by each provider and county program and submitted to the EEO coordinator by June 15 of each year for review.

b. The Civil Rights Compliance Report will be completed by the EEO coordinator and submitted through the appropriate official to the Office of Equal Opportunity and Minority Health by July 20 of each year.

c. The On-Site Validation Review Report will be completed as part of the validation review process.

d. Auxiliary Aids and Limited English Proficiency Plans will be completed and submitted to the Office of Equal Opportunity and Minority Health by March 31 of each year.

2. Record Keeping.

a. All records, reviews, checklists, compliance agreements, corrective action plans, reviewer notes, review summaries and other documentation reflecting civil rights compliance activities will be maintained by the appropriate EEO coordinator.

b. Documentation of the dissemination of the Department of Health nondiscrimination policy and procedures, including to whom sent or given, how and when it was distributed, and what information was provided will be maintained by the EEO coordinator.

G. Nondiscriminatory Recruitment and Selection. Departmental employment procedures and practices will provide for the nondiscriminatory recruitment and selection of all employees to ensure the inclusion and full representation of minorities, women and individuals with disabilities in all Department of Health programs and activities.

1. Review of Selections. Each hiring official and human resource officer will review and validate selection criteria to assure nondiscriminatory selection of applicants.

**VIII. Distribution List.** Notification of Intranet location sent to the following:

Deputies

Division Directors  
Executive Office Directors  
Bureau Chiefs  
County Health Department Directors/Administrators  
Children's Medical Services Nursing Directors/Medical Directors  
Human Resource Liaisons  
EEO Coordinators  
Policies and Procedures Library, hard copy  
Web Manager, electronic copy

**IX History Notes.** Replaces HRS 220-2, Revised 06-01-2001

**X. Exhibits**

- A. [Civil Rights Compliance Checklist](#)
- B. [Civil Rights Compliance Report](#)
- C. [On-Site Validation Report](#)

# AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

Editor's Note:

Following is the current text of the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA was originally enacted in public law format and later rearranged and published in the United States Code. The United States Code is divided into titles and chapters that classify laws according to their subject matter. Titles I, II, III, and V of the original law are codified in Title 42, chapter 126, of the United States Code beginning at section 12101. Title IV of the original law is codified in Title 47, chapter 5, of the United States Code. Since this codification resulted in changes in the numbering system, the Table of Contents provides the section numbers of the ADA as originally enacted in brackets after the codified section numbers and headings.

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## TITLE 42 - THE PUBLIC HEALTH AND WELFARE

### CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

Sec. 12101. Findings and purpose. [Section 2]

(a) Findings.

(b) Purpose.

Sec. 12101 note: Findings and Purposes of the ADA Amendments Act of 2008

Sec. 12102. Definition of disability. [Section 3]

Sec. 12103. Additional definitions.

#### SUBCHAPTER I - EMPLOYMENT [Title I]

Sec. 12111. Definitions. [Section 101]

Sec. 12112. Discrimination. [Section 102]

(a) General rule.

(b) Construction.

(c) Covered entities in foreign countries.

(d) Medical examinations and inquiries.

Sec. 12113. Defenses. [Section 103]

- (a) In general.
- (b) Qualification standards.
- (c) Qualification standards and tests related to uncorrected vision.
- (d) Religious entities.
- (e) List of infectious and communicable diseases.

Sec. 12114. Illegal use of drugs and alcohol. [Section 104]

- (a) Qualified individual with a disability.
- (b) Rules of construction.
- (c) Authority of covered entity.
- (d) Drug testing.
- (e) Transportation employees.

Sec. 12115. Posting notices. [Section 105]

Sec. 12116. Regulations. [Section 106]

Sec. 12117. Enforcement. [Section 107]

- (a) Powers, remedies, and procedures.
- (b) Coordination.

## SUBCHAPTER II - PUBLIC SERVICES [Title II]

### PART A - Prohibition Against Discrimination and Other Generally Applicable Provisions [Subtitle A]

Sec. 12131. Definitions. [Section 201]

Sec. 12132. Discrimination. [Section 202]

Sec. 12133. Enforcement. [Section 203]

Sec. 12134. Regulations. [Section 204]

- (a) In general.

(b) Relationship to other regulations.

(c) Standards.

## PART B - Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory [Subtitle B]

### SUBPART I - Public Transportation Other Than by Aircraft or Certain Rail Operations [Part I]

#### Sec. 12141. Definitions. [Section 221]

#### Sec. 12142. Public entities operating fixed route systems. [Section 222]

(a) Purchase and lease of new vehicles.

(b) Purchase and lease of used vehicles.

(c) Remanufactured vehicles.

#### Sec. 12143. Paratransit as a complement to fixed route service. [Section 223]

(a) General rule.

(b) Issuance of regulations.

(c) Required contents of regulations.

(d) Review of plan.

(e) "Discrimination" defined.

(f) Statutory construction.

#### Sec. 12144. Public entity operating a demand responsive system. [Section 224]

#### Sec. 12145. Temporary relief where lifts are unavailable. [Section 225]

(a) Granting.

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## **TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS**

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## TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

### CHAPTER 5 - WIRE OR RADIO COMMUNICATION .

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## TITLE 42 - THE PUBLIC HEALTH AND WELFARE

### CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

Sec. 12101. Findings and purpose

- (a) Findings

The Congress finds that

- (1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Sec. 12101 note: Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, § 2, Sept. 25, 2008, 122 Stat. 3553, provided that:

(a) Findings

Congress finds that—

- (1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and provide broad coverage;
- (2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;
- (3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;
- (4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;
- (5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;
- (6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;
- (7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term “substantially limits” to require a greater degree of limitation than was intended by Congress; and
- (8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term “substantially limits” as “significantly

restricted” are inconsistent with congressional intent, by expressing too high a standard.

(b) Purposes

The purposes of this Act are–

(1) to carry out the ADA’s objectives of providing “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court’s reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms “substantially” and “major” in the definition of disability under the ADA “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and that to be substantially limited in performing a major life activity under the ADA “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives”;

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for “substantially limits”, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress’ expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term “substantially limits” as “significantly restricted” to be consistent with this Act, including the amendments made by this Act.

## Sec. 12102. Definition of disability

As used in this chapter:

### (1) Disability

The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

### (2) Major Life Activities

#### (A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

#### (B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

### (3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

### (4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.



## Sec. 12103. Additional definitions

As used in this chapter

### (1) Auxiliary aids and services

The term “auxiliary aids and services” includes

- (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- (C) acquisition or modification of equipment or devices; and
- (D) other similar services and actions.

### (2) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

## SUBCHAPTER I - EMPLOYMENT

### Sec. 12111. Definitions

As used in this subchapter:

#### (1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

#### (2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

#### (3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

#### (4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

#### (5) Employer

##### (A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

##### (B) Exceptions

The term "employer" does not include

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

#### (6) Illegal use of drugs

##### (A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

##### (B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual

The term "qualified individual " means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

## Sec. 12112. Discrimination

### (a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

### (b) Construction

As used in subsection (a) of this section, the term “discriminate against a qualified individual on the basis of disability” includes

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration

(A) that have the effect of discrimination on the basis of disability;

(B) that perpetuates the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)

(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitute discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on

- (i) the interrelation of operations;
- (ii) the common management;
- (iii) the centralized control of labor relations; and
- (iv) the common ownership or financial control of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

#### (4) Examination and inquiry

##### (A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

##### (B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

##### (C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

#### Sec. 12113. Defenses

##### (a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job- related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision

Notwithstanding section 12102(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and



(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

## (2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

## (3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

# Sec. 12114. Illegal use of drugs and alcohol

## (a) Qualified individual with a disability

For purposes of this subchapter, qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

## (b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the

covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

Sec. 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

Sec. 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

Sec. 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

## SUBCHAPTER II - PUBLIC SERVICES

### Part A - Prohibition Against Discrimination and Other Generally Applicable Provisions

#### Sec. 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or

practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

#### Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

#### Sec. 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

#### Sec. 12134. Regulations

##### (a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

##### (b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

##### (c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

## Part B - Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

### Subpart I - Public Transportation Other than by Aircraft or Certain Rail Operations

#### Sec. 12141. Definitions

As used in this subpart:

##### (1) Demand responsive system

The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

##### (2) Designated public transportation

The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

##### (3) Fixed route system

The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

##### (4) Operates

The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

##### (5) Public school transportation

The term "public school transportation" means transportation by school bus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

##### (6) Secretary

The term "Secretary" means the Secretary of Transportation.

#### Sec. 12142. Public entities operating fixed route systems

##### (a) Purchase and lease of new vehicles

It shall be considered discrimination for purposes of section which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(a) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

Sec. 12143. Paratransit as a complement to fixed route service

(a) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs that are sufficient to provide to such individuals a level of service

(1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or

(2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section

(A)

(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;



(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (a), accompanying the individual with a disability provided that space for these additional individuals are available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

## (2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

## (3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

## (4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph

(5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others

The regulations issued under this section shall

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a) of this section, the term "discrimination" includes

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d) (3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

#### Sec. 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

#### Sec. 12145. Temporary relief where lifts are unavailable

##### (a) Granting

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

##### (b) Duration and notice to Congress

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

Sec. 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Sec. 12147. Alterations of existing facilities

(a) General rule

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation] in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

Sec. 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

## (2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(a) of this title (relating to key stations).

## (3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

## (b) One car per train rule

### (1) General rule

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

### (2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

## Sec. 12149. Regulations

### (a) In general

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards

The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

Sec. 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

Subpart II - Public Transportation by Intercity and Commuter Rail

Sec. 12161. Definitions

As used in this subpart:

(1) Commuter authority

The term "commuter authority" has the meaning given such term in section 24102(4) of title 49.

(2) Commuter rail transportation

The term "commuter rail transportation" has the meaning given the term "commuter rail passenger transportation" in section 24102(5) of title 49.

(3) Intercity rail transportation

The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.



(4) Rail passenger car

The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term "responsible person" means

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station

The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

Sec. 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;
- (iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and
- (iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to

- (i) be able to be entered from the station platform by an individual who uses a wheelchair; or
- (ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches

(i) a number of spaces

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (a) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

#### (4) Food service

##### (A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (I) through which an individual who uses a wheelchair may enter.

##### (B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 1132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are

readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (a) or (b) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

Sec. 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this title.

Sec. 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

Sec. 12165. Interim accessibility requirements



(a) Stations

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

### SUBCHAPTER III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

#### Sec. 12181. Definitions

As used in this subchapter:

(1) Commerce

The term "commerce" means travel, trade, traffic, commerce, transportation, or communications

(A) among the several States;

(B) between any foreign country or any territory or possession and any State;  
or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term "commercial facilities" means facilities

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system

The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system

The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus

The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity

The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102[1] of title 49.

(9) Readily achievable

The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

Sec. 12182. Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a) of this section, discrimination includes

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a) of this section, discrimination includes

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when

viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a) of this section, discrimination includes

(I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and

(II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

Sec. 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of



the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

Sec. 12184. Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a) of this section, discrimination includes

(1) the imposition or application by an entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)

(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (a)(2)© or (a)(7) of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition

As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

Sec. 12185. Study

(a) Purposes

The Office of Technology Assessment shall undertake a study to determine

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents

The study shall include, at a minimum, an analysis of the following:

- (1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.
- (2) The degree to which such buses and service, including any service required under sections 12184(a)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.
- (3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.
- (4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.
- (5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.
- (6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee

In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of

- (1) members selected from among private operators and manufacturers of over-the-road buses;
- (2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and
- (3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline

The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in

section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review

In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

Sec. 12186. Regulations

(a) Transportation provisions

(1) General rule

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12182 (a)(2)(a) and (C) of this title and to carry out section 12184 of this title (other than subsection (a)(4)).

(2) Special rules for providing access to over-the-road buses

(A) Interim requirements

(i) Issuance

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period

The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (a).

(B) Final requirement

(i) Review of study and interim requirements

The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance

Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period

Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards

The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b) (2) and 12184 of this title.

(b) Other provisions

Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in

subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines

Standards included in regulations issued under subsections (a) and (b) of this section shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards

(1) Facilities

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

Sec. 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

## Sec. 12188. Enforcement

### (a) In general

#### (1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

#### (2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and Section 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

### (b) Enforcement by Attorney General

#### (1) Denial of rights

##### (A) Duty to investigate

##### (i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

##### (ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such



certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that

- (i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or
- (ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1) (B), the court

- (A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter
  - (i) granting temporary, preliminary, or permanent relief;
  - (ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and
  - (iii) making facilities readily accessible to and usable by individuals with disabilities;
- (B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and
- (C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount
  - (i) not exceeding \$50,000 for a first violation; and
  - (ii) not exceeding \$100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2) (C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

#### (4) Punitive damages

For purposes of subsection (b) (2) (B) of this section, the term "monetary damages" and "such other relief" does not include punitive damages.

#### (5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

### Sec. 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

## SUBCHAPTER IV - MISCELLANEOUS PROVISIONS

### Sec. 12201. Construction

#### (a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

#### (b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

#### (c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter I and III of this chapter.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) Reasonable accommodations and modifications

A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under

subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) solely under subparagraph (C) of such section.

#### Sec. 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

#### Sec. 12203. Prohibition against retaliation and coercion

##### (a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

##### (b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

##### (c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

#### Sec. 12204. Regulations by Architectural and Transportation Barriers Compliance Board

##### (a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

##### (b) Contents of guidelines

The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general

The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register

With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites

With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

Sec. 12205. Attorney's fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Sec. 12205a. Rule of Construction Regarding Regulatory Authority

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 (including rules of construction) and the definitions in section 12103, consistent with the ADA Amendments Act of 2008.

Sec. 12206. Technical assistance

(a) Plan for assistance

(1) In general

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation

(1) Rendering assistance

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters

(A) Subchapter I

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter.

(B) Subchapter II

(i) Part A

The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts

(1) In general

Each Federal agency that has responsibility under subsection (c) (2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) Dissemination of information

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance

An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

Sec. 12207. Federal wilderness areas

(a) Study

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access

(1) In general

Congress reaffirms that nothing in the Wilderness Act (16 U.S.C. 1131 et seq.) is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined

For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

Sec. 12208. Transvestites

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

Sec. 12209. Instrumentalities of Congress

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:



(1) In general

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities

For purposes of this section, the term "instrumentality of the Congress" means the following: the General Accounting Office, the Government Printing Office, and the Library of Congress.

(5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e -16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations

The remedies and procedures set forth in section 2000e -16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

## Sec. 12210. Illegal use of drugs

### (a) In general

For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

### (b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

### (c) Health and other services

Notwithstanding subsection (a) of this section and section 12211(b)(3) of this subchapter, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

### (d) "Illegal use of drugs" defined

#### (1) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

## (2) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

### Sec. 12211. Definitions

#### (a) Homosexuality and bisexuality

For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

#### (b) Certain conditions

Under this chapter, the term "disability" shall not include

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

### Sec. 12212. Alternative means of dispute resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

### Sec. 12213. Severability

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

## TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

### CHAPTER 5 - WIRE OR RADIO COMMUNICATION

#### SUBCHAPTER II - COMMON CARRIERS

##### Part I - Common Carrier Regulation

Sec. 225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions

As used in this section

(1) Common carrier or carrier

The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(a) and 221(a) of this title.

(2) TDD

The term "TDD" means a Telecommunications Device for the Deaf which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services

The term "telecommunications relay services" means telephone transmission relay services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) Availability of telecommunications relay service

(1) In general

In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier

engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

(c) Provision of services

Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) of this section for such State.

(d) Regulations

(1) In general

The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

## (2) Technology

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

## (3) Jurisdictional separation of costs

### (A) In general

Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

### (B) Recovering costs

Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

## (e) Enforcement

### (1) In general

Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

### (2) Complaint

The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

(f) Certification

(1) State documentation

Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) Requirements for certification

After review of such documentation, the Commission shall certify the State program if the Commission determines that

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding

Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification

The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint

If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

## (2) Jurisdiction of Commission

After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if

(A) final action under such State program has not been taken on such complaint by such State

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State;  
or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section.

## TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

### CHAPTER 5 - WIRE OR RADIO COMMUNICATION

#### SUBCHAPTER VI - MISCELLANEOUS PROVISIONS

##### Sec. 611. Closed-captioning of public service announcements

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee

(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.